

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
JEROME MALRY,)
vs.) No. 02-0273
PEOPLES GAS LIGHT AND COKE COMPANY)
Complaint as to lack of services)
at 7455 S. Merrill and request)
for audit and investigation in)
Chicago, Illinois.)

Chicago, Illinois

July 23, 2002

Met pursuant to notice at 10:30 a.m.

BEFORE:

MR. SHERWIN ZABAN, Administrative Law Judge

1 APPEARANCES:

2 MR. E. JEROME MALRY,
3 4346 N. Clarendon Avenue, Garden Suite
4 Chicago, Illinois 60613
5 Appearing Pro Se;

6 MR. BRIAN MCCARTHY
7 130 East Randolph Drive, 23rd Floor
8 Chicago, Illinois 60601
9 Appearing for Peoples Gas Light
10 and Coke Company.

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21 SULLIVAN REPORTING COMPANY, by
22 Kerry L. Knapp, CSR

1 JUDGE ZABAN: By the power vested in me by the
2 Illinois Commerce Commission, I now call Docket No.
3 02-0273, Jerome Malry vs. Peoples Gas Light and Coke
4 Company.

5 Will the parties, please, identify themselves
6 and enter their appearances for the record.

7 MR. MALRY: My name is E. Jerome Malry. I'm
8 the owner of the property.

9 MR. MCCARTHY: Brian McCarthy for the
10 respondent, Peoples Gas Light and Coke Company, 130
11 East Randolph Drive, Chicago, Illinois 60601.

12 JUDGE ZABAN: Okay. The last time this matter
13 was up, we continued to today for status in terms of
14 where people are in discovery.

15 At this point, has the request -- has all the
16 discovery requested by the parties been answered?

17 MR. MALRY: No, it has not.

18 JUDGE ZABAN: Okay.

19 MR. MALRY: No, it has not.

20 JUDGE ZABAN: We had a little discussion off
21 the record, a short discussion in which, Mr. Malry,
22 you had indicated that you believe there's other

1 buildings that may have similar problems as to the
2 one that you're experiencing here at 75th and
3 Merrill; is that correct?

4 MR. MALRY: Yes. I had stated earlier that I
5 had spoke with counsel approximately six weeks ago
6 and he indicated that he was going to object to
7 bringing in other buildings other than the one
8 specifically stated on this complaint.

9 My response was that the problems were all
10 similar, and I would like to -- in respect of the
11 Illinois Commerce Commission's time and my time and
12 counsel's time, to combine the two.

13 In the interim, I proceeded to try to get a
14 formal complaint separating them as counsel
15 suggested. I called on the 3rd of June, spoke with
16 Mr. Doesheen (phonetic) who was supposed to have
17 talked with Ms. Pound. She has not been available
18 to return the call, but I have called back on a
19 number of occasions just most recently to get forms
20 for the other buildings. And they have to this day
21 refused to send me forms.

22 JUDGE ZABAN: Okay. What buildings

1 specifically are you talking about?

2 MR. MALRY: 4220 South Michigan, 4230 South
3 Michigan, 7749 through 59 South Yates, which also
4 has an address of 2406 through 2410 East 78th
5 Street.

6 JUDGE ZABAN: Okay. You also own the building
7 at 5007 South King Drive; is that correct?

8 MR. MALRY: That's correct.

9 JUDGE ZABAN: Okay. And you have filed a
10 separate complaint as it relates to that building?

11 MR. MALRY: That's a separate complaint, yes.

12 JUDGE ZABAN: As I've indicated to you,
13 Mr. Malry, it's my opinion that the -- that the
14 Commission's rules don't allow for class actions.

15 And class actions, generally, are designated as
16 people who are, although not necessarily the same
17 person, but people who are situated in a similar
18 position based on a particular set of facts.

19 In this particular case, I believe that,
20 although you are the same, in fact, the owner of
21 these buildings, but even if the facts were somewhat
22 similar, that we wouldn't be able to hear them as a

1 group, that we would have to hear them individually.

2 I will make that ruling as part of the order
3 that I enter today. So that if there's any question
4 in the minds of any of the employees of the Illinois
5 Commerce Commission, they can check the docket
6 ruling as today that I've ruled that they can't be
7 consolidated under one hearing.

8 Although, actually what I would probably allow
9 you to do is I would allow you to file them
10 individually; and then if it does turn out that the
11 facts are the same, we may be able to consolidate
12 them and do it that way. Okay?

13 MR. MALRY: Yes, sir.

14 JUDGE ZABAN: I can't allow you to file them
15 under this docket at least for the time being.
16 Okay?

17 MR. MCCARTHY: May I -- there's another issue
18 that's present. The question is what would he file?
19 Would he jump directly to a formal complaint on
20 these matters or would he go to an informal
21 complaint?

22 JUDGE ZABAN: I understand that that may be one

1 of the problems you're facing here. Have you ever
2 had informal --

3 MR. MALRY: Yes, I have. Actually, on the
4 record, Mr. -- counsel took information about one of
5 these buildings the last time we met here and there
6 was a follow-up.

7 JUDGE ZABAN: But Mr. McCarthy is not obligated
8 to do anything because there's nothing before the
9 Commission.

10 MR. MALRY: Okay.

11 JUDGE ZABAN: And, incidentally,
12 notwithstanding what I've said on the record, I know
13 there are cases, like, for example, when we do area
14 code cases, that involve lots of people and involve
15 one area code, but those are special situations
16 which the legislature has given us authority to
17 hear. But in these cases, this is somewhat
18 different.

19 My suggestion then is, as I've indicated to
20 you, I will make it part of the record and I will
21 enter a ruling in this matter so that if there's any
22 question in the minds of the employees of the

1 Commerce Commission, I've ruled that they can't be
2 filed under this docket.

3 Now, let's go on to the next portion. What in
4 terms of discovery are you missing?

5 MR. MALRY: I would like to -- now that you've
6 made it clear that it is only going to have to do
7 with one building, I'd like to go through my
8 discovery requests individually and ask that the
9 counsel be compelled to respond.

10 He responded to four or five of my requests. I
11 had 23. And none response to 14. So I wanted to go
12 through them individually and ask that -- that it is
13 appropriate that he respond to the individual --

14 JUDGE ZABAN: What is 14?

15 MR. MALRY: There are 14 that he didn't respond
16 to. I have a list here. I'll give you a copy.

17 JUDGE ZABAN: What are the 14 he didn't respond
18 to?

19 MR. MALRY: Here is my list. Here is his list.

20 JUDGE ZABAN: Okay. Do you have a list of the
21 14 that he didn't respond to?

22 MR. MALRY: Yeah. I'm going to go through them

1 individually, if I could.

2 JUDGE ZABAN: Okay.

3 Mr. McCarthy, are you aware of this list?

4 MR. McCARTHY: Yes, I am. Okay.

5 JUDGE ZABAN: All right.

6 MR. MALRY: Some of these I'm going to delete
7 because, as in the case of the recent order, it's
8 not appropriate.

9 JUDGE ZABAN: Let's start out real simple by
10 which ones are you going to delete? Give us the
11 numbers.

12 MR. MALRY: No. 1 I'll delete because it has to
13 do with the Yates --

14 JUDGE ZABAN: You don't have to give me the
15 reason. Just tell me which ones.

16 MR. MALRY: Okay. Delete No. 1.

17 Pardon me for taking so much time, but I have
18 to cross-reference to see which buildings they have
19 to do with.

20 Delete No. 7. Delete No. 8. Delete No. 9.
21 Delete No. 10, No. 11, No. 14, No. 15, No. 16, No.
22 18. And I simply have a question for

1 No. 25. But that's all the deletions. I just have
2 a question for No. 25.

3 JUDGE ZABAN: Okay. Let's see what we have.
4 You said there were 14 open. 10 have been resolved.
5 So that should leave three and a question.

6 What are the three that are open?

7 MR. MALRY: No. 2. You have the question in
8 front of you.

9 JUDGE ZABAN: It says, See documents attached
10 as response.

11 MR. MALRY: I'll give you a copy of that.

12 JUDGE ZABAN: They've given you documents.
13 What's missing?

14 MR. MALRY: All the dates which -- for -- 2A
15 was missing. 2B was missing.

16 JUDGE ZABAN: Dates for all the appointments
17 which -- and who is EJM?

18 MR. MALRY: That's me, my initials.

19 JUDGE ZABAN: All right. How is that relevant?

20 MR. MALRY: It's relevant because in a
21 letter -- I'll give you a copy of this letter.

22 JUDGE ZABAN: Just tell me what the letter

1 says.

2 MR. MALRY: The letter says I didn't make all
3 the appointments for all the billings. That's why I
4 didn't get a gas bill for a year. He said that in a
5 letter.

6 JUDGE ZABAN: Okay. That's fine. B is
7 missing?

8 MR. MALRY: 2A and B.

9 MR. MCCARTHY: I disagree with him. I think
10 what we've got -- we've given him documents that
11 give those dates. We didn't provide a list perhaps
12 of the dates.

13 He said provide written documentation for each
14 appointment, each building, dates for all the
15 appointments. So I gave him written documentation
16 that shows those appointments.

17 MR. MALRY: But the documentation that he -- I
18 cannot interpret his internal files.

19 JUDGE ZABAN: That's fine. Mr. McCarthy will
20 aid you in terms of interpreting those files, but
21 I'm not going to compel him to give you a separate
22 list.

1 Let's go down to B. Provide the written and
2 verbal notification for each -- including the name
3 of the representative making the appointment.

4 Is that on the documents you provided him?

5 MR. MALRY: I can't read his documents.

6 JUDGE ZABAN: I'm asking Mr. McCarthy.

7 MR. McCARTHY: Provide written verbal
8 notification for each of the --

9 JUDGE ZABAN: Do you have that information?

10 MR. McCARTHY: If we have it, I believe it's
11 included in this material. There's an H. Edwards
12 which tells you, I think, the person who made
13 the -- or who actually went out there. I believe
14 the employee went out there --

15 JUDGE ZABAN: Let's see if we can resolve that.

16 MR. McCARTHY: Oh, and the names of the people
17 over here.

18 JUDGE ZABAN: Okay. I think we'll resolve that
19 when he explains the --

20 MR. McCARTHY: I think it's all in there. The
21 question is --

22 JUDGE ZABAN: What else -- the question is

1 what?

2 MR. McCARTHY: I'm sorry. I get a little
3 concerned when somebody asks for documents
4 responsive to a request and I provide documents
5 responsive to the request. I'm not all that keen on
6 necessarily being his interpreter of our documents.

7 JUDGE ZABAN: Well, I think I'm giving you the
8 benefit of not having to provide the individual
9 documents. I understand Mr. Malry does have to do
10 some work in terms of -- but if I give you coded
11 messages, what good are they? Okay? They're
12 absolutely meaningless.

13 MR. McCARTHY: Understand.

14 JUDGE ZABAN: So I think you can take the time
15 to show him how the document is read. I don't think
16 you necessarily have to go through each document and
17 pull out every fact for him, but I think you at
18 least owe Mr. Malry to show him what the document
19 means and how to be able to read it.

20 MR. McCARTHY: Maybe I would better off -- I
21 would like maybe the option of giving him a list
22 then.

1 JUDGE ZABAN: Talk to Mr. Malry after this and
2 I'll allow you -- if it's easier for you to make a
3 list, you'll make a list. If not, do it the other
4 way.

5 MR. McCARTHY: Okay.

6 JUDGE ZABAN: Okay. Mr. Malry, what else are
7 we missing?

8 MR. MALRY: No. 3. That was not provided.

9 MR. McCARTHY: Refers to Yates is my notes on
10 this.

11 MR. MALRY: The reason I'm including this one
12 is I attempted to make a payment arrangement on the
13 75th Street. And the arrangement
14 Mr. Schaeffer offered was different than what their
15 stated published record is on payment arrangements
16 for outstanding balances.

17 And, furthermore --

18 MR. McCARTHY: This is -- I mean, he's even got
19 it -- he summarized these documents. I'm going to
20 cut him off here. He gave me a list of
21 correspondence which I thank him for --

22 MR. MALRY: Can I finish, please? May I

1 finish, please?

2 JUDGE ZABAN: Allow Mr. Malry to finish what he
3 has to say.

4 MR. MALRY: The reason I ask on what basis he
5 made this -- not offer, but he required 33 percent
6 down. I wanted to know on what basis? Is it a
7 written basis that he would not allow me to make a
8 similar type of payment arrangement that I had made
9 for other buildings and other --

10 I've calculated with paperwork that I have that
11 -- from Peoples Energy that they allow from 17132533
12 percent down payment on past due amounts. And I
13 think it's just arbitrary how they determine what
14 amount I pay.

15 And I wanted to know on what basis he used to
16 give me the amount that he -- the only amount that
17 he would use -- that he would accept before he would
18 turn my gas off. I just want to know how he
19 calculated, from what authority or from what paper
20 or what.

21 MR. MCCARTHY: But you're admitting that this
22 is regarding your Yates bill?

1 MR. MALRY: No. This is regarding my 75th
2 Street property. He refused to make a payment
3 arrangement with me on the 75th Street property
4 unless I payed 33 percent down, at which time I said
5 that wasn't the arrangement you made on the other
6 bill.

7 JUDGE ZABAN: Okay. I understand. Okay. I
8 think that's -- I think that's a valid concern of
9 Mr. Malry in terms of how this down payment amount
10 was calculated in light of the fact that, according
11 to Mr. Malry, there is -- there appears to be some
12 flexibility in terms of how he makes that
13 determination. I don't think that's unreasonable.

14 All right. What else, Mr. Malry?

15 MR. MALRY: No. 4C, he didn't provide -- at
16 least I didn't see in the -- his response, written
17 response, procedures for unsuccessful meter
18 readings, what happens if a meter is not read.

19 MR. MCCARTHY: No, we have to go back to
20 No. 3. This is -- we don't have a payment plan for
21 Merrill, as far as I know. So I don't know what --
22 I don't even know whether there was ever a request

1 for a payment plan.

2 JUDGE ZABAN: Do you have a copy of the letter
3 from 7/24?

4 MR. MALRY: Yes, I do. It's right here.

5 JUDGE ZABAN: Let me see the letter.

6 MR. MALRY: I also have a recorded message.

7 JUDGE ZABAN: Let me see the letter.

8 MR. MCCARTHY: I want a copy of that recorded
9 message.

10 JUDGE ZABAN: That's fine. Let me see the
11 letter. Did you make a request for it?

12 MR. MCCARTHY: Yeah, I did.

13 JUDGE ZABAN: Okay. We'll get to what you need
14 in a minute.

15 MR. MCCARTHY: All right.

16 MR. MALRY: 7/24, what year?

17 JUDGE ZABAN: '01. It says here, Re: 7749
18 South Yates.

19 MR. MALRY: Hm-hmm. That's the agreement he
20 made for Yates which required a minuscule amount
21 down payment, which isn't consistent with what he
22 required for 75th Street. That's why I brought this

1 up.

2 JUDGE ZABAN: I don't know that they're under
3 any obligation. And, quite frankly, I don't
4 know -- I don't know the amount owed. I don't have
5 any idea whether there's any --

6 MR. MALRY: I have the bill right here.

7 JUDGE ZABAN: How much money did you owe on
8 Yates?

9 MR. MALRY: \$44,000.

10 JUDGE ZABAN: How much money is owed on
11 Merrill?

12 MR. MALRY: At the time, it was inaccurate
13 because --

14 JUDGE ZABAN: At the time, how much was
15 alleged?

16 MR. MALRY: Alleged was 80 something. I asked
17 him to do another reading estimate and it came down
18 to 70 something.

19 JUDGE ZABAN: Okay. What I would ask that you
20 do, Mr. McCarthy, if there is a method by which
21 Peoples Gas determines how much is required, in
22 other words, it may be based on the amount owed or

1 it may be based on the time due, whatever it is be
2 provided to Mr. Malry.

3 If there's some written formula by which
4 Peoples Gas determines what the minimum down payment
5 is, I ask you to provide that to Mr. Malry.

6 MR. MALRY: Thank you, sir.

7 JUDGE ZABAN: Let's get on to 3C.

8 MR. MALRY: 3C, I didn't --

9 JUDGE ZABAN: Okay. Mr. McCarthy, do you know
10 are there any procedures for successful or
11 unsuccessful meter readings for new accounts?

12 MR. MCCARTHY: No, I'm not aware of --

13 JUDGE ZABAN: What procedures are you looking
14 for, specifically, Mr. Malry?

15 MR. MALRY: When access is not gained, what do
16 they do? The reason I posed the question was a year
17 went by and I didn't get a bill. So I wanted to
18 know --

19 JUDGE ZABAN: Would you check and see if
20 there's any procedure in terms of what they do if
21 they can't get access on a new account.

22 MR. MCCARTHY: Okay. I think what I would say

1 is I will check again, but I believe our response is
2 responsive of --

3 JUDGE ZABAN: The answer is you will check. If
4 there is no procedure, you will indicate that in
5 writing. Then we can go from there.

6 MR. MCCARTHY: Okay.

7 JUDGE ZABAN: Next, Mr. Malry?

8 MR. MALRY: No. 12, I believe we're at. I
9 would like a more specific response to my specific
10 questions. He did indicate who read the letter, but
11 I wanted to -- specifically on 12C, I'd like a
12 specific response.

13 For instance, on one of his responses he writes
14 none versus a response saying I don't feel it's
15 going to lead to discovery. I'd like a specific
16 response to 12C.

17 JUDGE ZABAN: What specifically are you asking
18 for? Who read the letter?

19 MR. MALRY: No, I got that. Just 12C.

20 JUDGE ZABAN: It says, See the documents
21 attached as response to request 12. Okay.

22 MR. MALRY: 12C, Please indicate what action

1 was taken or response initiated due to the concerns
2 contained in the letter. I just want a specific
3 response to that one question.

4 JUDGE ZABAN: What -- what --

5 MR. MALRY: I can give you a copy of the
6 letter.

7 JUDGE ZABAN: What specifically are you looking
8 for? Action by whom?

9 MR. MALRY: By whomever read the letter.

10 JUDGE ZABAN: What, if any, action was taken?

11 MR. MALRY: Yes. I want him to reply to that
12 specifically. It was a very concerned letter I
13 wrote to the president. Several people read it.
14 And I want to know what action was taken as a result
15 of having received this letter and four people
16 having read it. I want a specific answer.

17 JUDGE ZABAN: How does it help you if you know
18 what they did?

19 MR. MALRY: Because I sent in \$5,000 for a
20 payment and they misapplied it which applied it to a
21 bill that went further up.

22 MR. McCARTHY: Okay. Is that --

1 MR. MALRY: And, also, I asked --

2 JUDGE ZABAN: But you're assuming now that
3 somehow the payment stayed with the letter the
4 entire time?

5 MR. MALRY: No, they cashed it and put it on
6 the wrong account. It's not even the money part.
7 It's the fact that in the letter I repeat I had
8 concerns about getting readings on my buildings and
9 why I had concerns. I said it over the phone that I
10 had concerns that the estimated period for which it
11 was based was the highest period in the last ten
12 years and that I needed actual readings.

13 JUDGE ZABAN: Okay.

14 MR. MALRY: I never got a response.

15 JUDGE ZABAN: All right.

16 MR. MALRY: So I want a specific response to
17 this question.

18 MR. McCARTHY: Okay. And I gave him some
19 documents that show it -- show what we did in
20 effect, but I can -- maybe I can provide a short
21 summary of what we did.

22 JUDGE ZABAN: I think that's a good idea. I

1 think Mr. Malry has a right to be informed in this
2 matter.

3 Okay. What else, Mr. Malry?

4 MR. MALRY: No. 13. I made a call to a service
5 person. I got the name. And I wanted a record of
6 this call. I want a response for my question. If
7 they don't have any record of this call, I want
8 that. But to say it's not appropriate, I had --

9 MR. MCCARTHY: 13 we gave you.

10 JUDGE ZABAN: It says, See documents attached
11 as response to 13. They gave you documents.

12 MR. MALRY: There's nothing about --

13 MR. MCCARTHY: Yeah, there's quite a bit here.

14 MR. MALRY: Okay. I'm sorry. Maybe I --

15 MR. MCCARTHY: That's okay.

16 JUDGE ZABAN: In the response to 13, is there
17 documentation about the call?

18 MR. MCCARTHY: Hm-hmm.

19 MR. MALRY: Is this -- oh, the reason -- no,
20 this is -- oh, I'm sorry. Let me see. I apologize.
21 That's it. 13 is fine.

22 JUDGE ZABAN: That's fine. What else do we

1 need then?

2 MR. MALRY: No. 17, the response that counsel
3 sent me was inappropriate. It had to do with an
4 earlier 4/25 inspection and didn't have to do with
5 the 5/21. So he didn't really respond to that.
6 I'll show you what he sent me.

7 MR. McCARTHY: Okay. Let me --

8 JUDGE ZABAN: Hold on. Give Mr. McCarthy a
9 chance to look.

10 MR. McCARTHY: Response 17. Our first response
11 is -- you asked in reference to the 5/21/02 second
12 attempt notice, please provide the first attempt
13 notification either written or verbal. I said not
14 available. It would have been written. That's all
15 I know.

16 This was done off the system, I believe. This
17 is a regulatory inspection, I believe. This is the
18 thing you called me about.

19 MR. MALRY: Exactly.

20 MR. McCARTHY: Right. B, please document where
21 and when such notice was mailed and who made the
22 call scheduling the first appointment notice. Right

1 now, it just says investigation continues. I'm
2 still trying to figure out who was running that.
3 I'm not sure.

4 In the end, I guess what I would sort of say
5 here is what's the point of this regarding your
6 bill? I mean, this -- wasn't this done? This was
7 taken care of, right? They did get in?

8 MR. MALRY: No. The point is I got a cut-off
9 notice stating that this is a second attempt. I
10 never got a first attempt notice. So I want to know
11 where --

12 MR. McCARTHY: What was the harm, I guess?

13 MR. MALRY: The harm is I get a cut-off notice,
14 you post a notice on my building, I'm trying to rent
15 apartments, they see a notice that my gas is going
16 to be cut off, and I don't even know anything about
17 the first notice.

18 MR. McCARTHY: Do you know --

19 JUDGE ZABAN: Wait a minute. What does it have
20 to do with this? I can't award you any damages, Mr.
21 Malry --

22 MR. MALRY: I don't want any damages.

1 JUDGE ZABAN: Okay. But, I mean, the point is
2 -- what is the point -- if you didn't receive the
3 first cut-off notice, what's the point and how does
4 that aid you in this particular case?

5 MR. MALRY: Because it shows a lack of service,
6 that if I'm going to be -- if my service is going to
7 be disconnected because of a notice I didn't receive
8 --

9 JUDGE ZABAN: So you're telling me that -- are
10 you telling me, is this part of a pattern of lack of
11 service?

12 MR. MALRY: Yes.

13 JUDGE ZABAN: Okay.

14 MR. MALRY: Extensive pattern.

15 JUDGE ZABAN: Then I agree that it's relevant.

16 MR. MCCARTHY: Okay.

17 JUDGE ZABAN: If he can show this is part of a
18 continuing pattern of lack of service by Peoples
19 Gas, then there is relevance to it. I agree with
20 you standing alone it may not mean anything, but if
21 he wants to show this is part of a pattern, then --
22 I know your investigation continues, Mr. McCarthy.

1 I ask that you resolve it as quickly as possible.

2 Okay. Next, Mr. Malry?

3 MR. McCARTHY: So you want B? I'm sorry. I
4 just want -- are we going on from 17 or are we --

5 MR. MALRY: This is 17B. And also, you
6 provided C, I got that. No. D is not really that
7 relevant. No. E you don't know yet because I don't
8 think you have the results. So that's fine.

9 JUDGE ZABAN: What else do we have?

10 MR. MALRY: I just have a question on
11 No. 25.

12 JUDGE ZABAN: Okay.

13 (Discussion off the record.)

14 MR. MALRY: I just have a question, the last
15 paragraph that Mr. Schaeffer --

16 MR. McCARTHY: All I have -- yeah, I guess it's
17 just a text response. I didn't realize. I thought
18 maybe I had it.

19 MR. MALRY: When you say I will supplement
20 Peoples Gas response when I --

21 MR. McCARTHY: I just always state that. It's
22 a right and it's my obligation that -- and your

1 obligation as well; that if I requested something
2 and you think you've responded fully to it but you
3 come across something responsive to it in the
4 intervening time, you have to provide that.

5 JUDGE ZABAN: Actually, the law provides that
6 in requests for discovery, there's a continuing
7 obligation to disclose information as it becomes
8 available even after discovery technically closes if
9 you have information.

10 And Mr. McCarthy is just merely stating his
11 duty under the law; that should any additional
12 information become available, that
13 he --

14 MR. MCCARTHY: That actually refers to
15 everything prior.

16 JUDGE ZABAN: He agrees he'll turn it over to
17 you.

18 MR. MALRY: Thank you, sir. The reason I ask
19 the question is because I wanted to make sure if I
20 find something, it would be allowed to --

21 JUDGE ZABAN: If you provide it timely to him,
22 in fact, it would be allowed.

1 MR. MALRY: Timely, what's that, sir?

2 JUDGE ZABAN: Timely means within a sufficient
3 time before hearing -- before the hearing so that
4 Mr. McCarthy has adequate time to investigate it.

5 MR. MALRY: Got it.

6 JUDGE ZABAN: Ultimately, I get to be the
7 arbitrary decider of what's timely or not. It's one
8 of my functions.

9 MR. MALRY: Got you. That's it.

10 JUDGE ZABAN: Okay. That's resolves your
11 problems.

12 Mr. McCarthy, as far as Mr. Malry goes?

13 MR. MCCARTHY: Yeah. Only one thing. Just
14 that tape. If you can make a duplicate of the tape
15 --

16 MR. MALRY: I will make a copy of the tape.

17 JUDGE ZABAN: So we're very close to resolving
18 the discovery aspect of this.

19 Mr. McCarthy, how long do you anticipate it
20 will take you to --

21 MR. MCCARTHY: Not that long.

22 JUDGE ZABAN: Couple weeks?

1 MR. McCARTHY: And I do expect to produce --
2 you know, for instance, in my preparation for the
3 hearing, I probably will end up producing another
4 document that we'll give to you as part of my
5 ongoing -- you asked for documents, I think, related
6 to this. I can give it to you.

7 JUDGE ZABAN: Let's set this for a final status
8 date in August.

9 MR. McCARTHY: Okay. Another short status, you
10 said, just to get this done?

11 JUDGE ZABAN: Just to make sure everything is
12 done. Then we'll set a schedule for testimony,
13 okay, and a hearing date.

14 How about August the 13th at 11:00?

15 MR. McCARTHY: I'm out of town that whole week.

16 JUDGE ZABAN: That's fine. That's not a
17 problem. How about August the 8th at 11:30?

18 MR. McCARTHY: What is that?

19 MR. MALRY: Is that a Wednesday?

20 JUDGE ZABAN: That's a Thursday.

21 MR. McCARTHY: Can we go the 7th?

22 MR. MALRY: I can't do it the 7th.

1 MR. McCARTHY: 6th?

2 JUDGE ZABAN: Does that give you enough time to
3 make sure you get everything?

4 MR. McCARTHY: I believe so. It's not --

5 JUDGE ZABAN: We can do the 6th at 11:30.

6 MR. McCARTHY: I should be able to do the 6th
7 at 11:30.

8 MR. MALRY: I didn't bring my -- the right
9 calendar, but --

10 JUDGE ZABAN: Here is the point, Mr. Malry.

11 MR. MALRY: I'd rather say yes.

12 JUDGE ZABAN: Here's what I'm going to do. I'm
13 going to set this for August the 6th at 11:30. What
14 we're going to do is this.

15 In the event that you are unable to attend,
16 okay, you can call me and let me know that discovery
17 is complete -- well, actually I do need you here.

18 MR. MALRY: I think I have to be somewhere at
19 2:00. I'm almost sure I can do it.

20 JUDGE ZABAN: Okay. So 11:30 is fine. We're
21 going to set this for August the 6th at 11:30.

22 In addition, I will enter a ruling saying that

1 this -- this matter only involves this particular
2 property and that I'm not going to grant you leave
3 to file additional properties in this document.

4 MR. MALRY: I have a motion at 11:00 that day.
5 I'm sorry. I know I do.

6 JUDGE ZABAN: Where is the motion at?

7 MR. MALRY: Daley Center, 1406.

8 JUDGE ZABAN: Well, as long as you're downtown,
9 why don't we put this in the afternoon.

10 MR. MCCARTHY: He said he had a 2:00.

11 MR. MALRY: It's 11:00.

12 MR. MCCARTHY: Oh, 11:00. It's not 2:00.

13 MR. MALRY: Yes.

14 MR. MCCARTHY: That's fine with me.

15 JUDGE ZABAN: Let's make this at 2:00, 8/6.

16 MR. MALRY: Great.

17 JUDGE ZABAN: That concludes the hearing. I
18 have another hearing that I believe is up at 11:00.
19 So the two of you are going to have to discuss this
20 outside of this room until I'm finished with that
21 and then you can come back in here.

22

(Whereupon, the above entitled
proceedings were continued to
August 6, 2002, at 2:00 p.m.)